(e) Following a collapse of part of the first floor concrete, the 3rd defendant's solicitors wrote to the plaintiffs claiming damages (AB8). The plaintiffs replied (AB7) asking how the 3rd defendant came to be in occupation but there was no reply to this.

(f) There is no bank account in name of partnership firm.

(g) It is with bank account of 3rd defendant company that materials are bought for manufacture at the said premises."

Counsel for the appellant submits that the trial judge erred in his findings of facts in that the findings were not supported by the evidence, or, if supported by the evidence, the wrong weight was placed on them or that he drew erroneous inferences from them.

Sir Harry Gibbs in *Lam Kee Ying Sdn. Bhd.* v. *Lam Shes & Anor.*,[1] in delivering the judgment of the Board said:

"However, the question whether the first respondent has parted with possession must depend upon all the facts and circumstances of the present case which in their Lordships' opinion are distinguishable from those of the cases cited. Some of the evidence – as to the erection of the signboard, the transfer of the electricity, water supply and telephone and the issue of receipts, bills and invoices in the name of the second respondent – is equivocal and is quite consistent with a conclusion that although the second respondent occupied the premises the first respondent retained possession. However the fact that the second respondent tendered its own cheque in payment of the rent is some evidence that the second respondent regarded itself, and was regarded by the first respondent, as having possession of the premises."

The first respondent in that case was the lessee of the premises and he was carrying on a partnership business on the premises. The first respondent and his partners incorporated a company (the second respondent) which acquired as a going concern the business of the partnership and carried on business on the premises.

In the present case the evidence is clear that the payment of the rents was by the 3rd defendants which was reflected in the accounts of the 3rd defendants. The appellant contended before the trial judge that he himself had been paying the rent in cash and debited it in the accounts of the 3rd defendants on the advice of his accountant to reduce the tax liability of the 3rd defendants. I am unable to say that the trial judge was wrong in rejecting the contention of the appellant.

There is no doubt that the keeping of the signboard of Hock Lian Manufacture Company at the said premises, the maintenance of PUB accounts and the Certificate of Registration of a Factory and the renewal of Certificate of Registration by the partnership firm and the fact that the 3rd defendants did not put up their signboard at the said premises are ploys employed by the appellant to substantiate possession as a statutory tenant. The appellant would have succeeded in misleading the respondents had the 3rd defendants not made a claim against the respondents for damages caused to the 3rd defendants' properties at the said premises and thereby unwittingly informing the respondents of their presence on the said premises.

It is clear that since 1972 the partnership of Hock Lian Manufacture Company had ceased operating altogether at the said premises when the 2nd defendant admitted that he left to cut losses.

The trial judge had overwhelming material on the evidence on which he properly arrived at the decision which he reached on facts.

There is a preponderance of evidence for the trial judge to come to the conclusion that the appellant and the 2nd defendant had parted with possession of the said premises to the 3rd defendants.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Tommy Neo; Kirpal Singh & Co.*

CHOO SI SENG v. LEE BOON SAI

[O.C.J. (Thean J.) September 30, 1985]

[Singapore – Suit No. 226 of 1981]

Contract – Document acknowledging receipt of $500 for purchase of flat at $132,500 – Document signed by defendant – Sale and Purchase agreement expressed to be made between parties within one week – Whether document constituted contract – Claim for specific performance of agreement and damages for breach of contract.

The defendant gave a broker, Lee an "option" to procure a purchaser for the said premises within one week, failing which the "option" would become null and void. In consequence Lee introduced the plaintiff as the purchaser to the defendant. The plaintiff negotiated with the defendant on the purchase of the premises at Clemenceau Avenue and the sale price was ultimately agreed at $132,500. A sum of $500 was paid to the defendant, and the plaintiff drafted a document (P.1) which was signed only by the

defendant. P1 contained the follow material particulars: the receipt of $500 from the plaintiff, the description of the said premises, the purchase price therefor, and the fact that the transaction was a sale and purchase of the said premises. It also contained the following: "The Sale and Purchase Agreement must be signed within one week with 10% of the purchase price to be paid and completion shall take place within 8 weeks from the signing of the Agreement. The Purchase is subject to satisfactory replies being received to all the Legal Requisitions."

The question before the court was whether P1 was a contract made between the plaintiff and the defendant for the sale by the defendant to the plaintiff of the said premises at the price of $132,500.

Held, dismissing the plaintiff's claim: the parties did not intend to be bound by P1 as a concluded contract but by the sale and purchase agreement to be prepared by the solicitors for the defendant and to be signed later.

Case referred to:

(1) *Daiman Development Sdn. Bhd.* v. *Mathew Lui Chin Tek & Anor.* [1981] 1 M.L.J. 56, 58.

CIVIL SUIT.

Ramalingam Joethy for the plaintiff.
K. S. Chung for the defendant.

Cur. Adv. Vult.

Thean J. : In November 1980, the defendant, then the owner of the premises, 354-C Sky Villa, Clemenceau Avenue, Singapore ("the said premises"), gave to a broker, Lee Ha Hong, an "option" to procure a purchaser for the said premises within two weeks, failing which the "option" would become null and void. In consequence, Lee Ha Hong introduced the plaintiff as the purchaser to the defendant and they met at a coffee house in People's Park on November 25, 1980. At that meeting, in which Lee Ha Hong and a friend of the plaintiff, Lam Chit Keong (PW3), were present, the plaintiff negotiated with the defendant on the purchase of the said premises, and the sale price thereof was ultimately agreed at $132,500. A sum of $500 was paid to the defendant, and the plaintiff drafted a document which was signed only by the defendant. That document is exhibit P1 (a copy of which is marked AB1), and is as follows:

$132,500 – 8 weeks
completion

2238962 8.30 a.m.

Stephen Lee
7371654
12.30 p.m. – 6.30

Mr. Ong Tiang Choon,
M/s Ong Tiang Choon
& Co.,
Union Bldg, 3rd Floor

25/11/80

Acknowledge receipt cash $500 from CHOO SI SENG for the purchase of my flat at 354C, Sky Villa, Clemenceau Ave. (0922) at $132,500 (One Hundred Thirty Two Thousand & Five Hundred Only). The Sale & Purchase Agreement must be signed within 1 week with 10% of the purchase price to be paid and Completion shall take place within 8 weeks from signing of the Agreement. The purchase is subject to satisfactory replies being received to all the Legal Requisitions.

Received:

(I/C No :- 0559097/C) Sgd. Stephen Lee Boon Sai
(STEPHEN LEE BOON SAI) 25-11-80.

On the following day, the plaintiff's solicitors wrote to the defendant's solicitors, M/s Ong Tiang Choon & Co., stating that the plaintiff was the purchaser of the said premises at the price of $132,500 with vacant possession to be given on completion and that $500 had been paid direct to the defendant. The said letter then continued as follows:

"We are instructed that our client's purchase is subject to the following conditions :

1) our client will sign the Agreement within a week from November 25, 1980 and the deposit of 10% shall be paid upon signing of the same;

2) completion shall take place within 8 weeks from signing of the said Agreement;

3) the sale and purchase is subject to satisfactory replies to the requisitions to the relevant authorities being received by the Purchaser's Solicitors. In the event of such replies not being satisfactory then the Purchaser may at his absolute discretion rescind the sale and purchase and in such event, each party shall pay its own legal costs and disbursements and neither party shall have any claim against each other.

If you are similarly instructed, we shall be grateful if you could be good enough to let us have the draft Agreement together with the relevant title deeds on our usual undertaking."

On November 28, 1980, M/s Ong Tiang Choon & Co. replied to the letter, stating that they had no instructions to act for the defendant with regard to the alleged agreement to sell the said premises to the plaintiff at $132,500. On the same day, the defendant returned to the plaintiff direct the sum of $500. Subsequently, the plaintiff instructed another firm of solicitors who then wrote to the defendant stating, *inter alia*, that the plaintiff did not accept the return of the sum of $500 and held the defendant bound by P1. The letter, however, referred to P1 as an "option" and said that on behalf of the plaintiff they (the solicitors) were exercising the "option" and that the balance of the 10% of the purchase price had been deposited with

them. No fruitful result was produced by this letter and on January 20, 1981, the plaintiff instituted the present proceedings against the defendant, claiming for specific performance of the agreement in P1 and damages for breach of contract in lieu of or in addition to specific performance. The claim as framed in the Statement of Claim was founded solely on P1 as a contract for the sale by the defendant to the plaintiff of the said premises at the price of $132,500.

Multiple defences were raised in the defence (which was amended subsequently). However, before me, the principal defence and, indeed, the sole defence pursued by the defendant is that P1 is not a contract but a mere receipt for the sum of $500 from the plaintiff and contemplated the execution of a contract to be made between the parties within 1 week from the date thereof.

There is therefore only one issue before me: whether P1 is a contract made between the plaintiff and the defendant for the sale by the defendant to the plaintiff of the said premises at the price of $132,500.

Counsel for the plaintiff and counsel for the defendant referred me to various authorities in support of their respective contentions. None of them, however, are of assistance to me. The matter before me is one purely of construction of P1, which must be viewed against the background of the relevant circumstances in which it came into existence. In this connection, I find the following passage from the judgment of the Privy Council delivered by Sir Garfield Barwick in *Daiman Development Sdn. Bhd.* v. *Mathew Lui Chin Teck & Anor.*[1] extremely apposite:

"The question whether parties have entered into contractual relationships with each other essentially depends upon the proper understanding of the expressions they have employed in communicating with each other considered against the background of the circumstances in which they have been negotiating, including in those circumstances the provisions of any applicable law. Where they have expressed themselves in writing the proper construction of the writing against that background will answer the question. The purpose of the construction is to determine whether the parties intend presently to be bound to each other or whether, no matter how complete their arrangements might appear to be, they do not so intend until the occurrence of some further event, including the signature of some further document or the making of some further arrangement. The question is one as to expressed intention, and is not to be answered by the presence or absence of any particular form of words. But, in general, employment of the formula "subject to contract" as a condition of their arrangement will preclude the present assumption by the parties of contractual obligations."

P1 contains the following material particulars: the receipt of $500 from the plaintiff, the description of the said premises, the purchase price therefore, and the fact that the transaction is a sale and purchase of the said premises. It contains in addition the following: "The Sale and Purchase Agreement must be signed within one week with 10% of the purchase price to be paid and Completion shall take place within 8 weeks from the signing of the Agreement. The Purchase is subject to satisfactory replies being received to all the Legal Requisitions." The inevitable question which arises is: did the parties intend P1 to be a concluded contract irrevocably binding on them, notwithstanding that a sale and purchase agreement was expressed to be made between them within one week therefrom? The plaintiff said that P1 was an open contract; it contained all the terms as agreed between him and the defendant; though P1 stated that the sale and purchase agreement was to be signed, such an agreement when prepared was to contain all the terms and conditions as in P1 "with no addition or otherwise"; and that at the coffee house, after negotiation with the plaintiff had been completed, he drafted the terms as agreed, paid $500 to the defendant and the defendant signed P1.

The defendant admitted that at the coffee house he had agreed with the plaintiff on the sale price of the said premises *i.e.* $132,500; but he laid down the following conditions of sale; (i) the sale and purchase agreement which was to be prepared by his solicitor must be signed within one week with the 10% deposit to be paid on signing and (ii) completion should take place within 8 weeks from the signing of the sale and purchase agreement. He stipulated one week for signing of the sale and purchase agreement because he would like to think it over within that period whether to go ahead with the sale of the said premises. He did not intend P1 to be a contract. He admitted receiving the sum of $500 but he said he did not really want it. It was given to him by the plaintiff, and on being given, he received it nonetheless, and in signing P1 he inserted the word "received" and signed immediately below that word. He also inserted the name and address of his solicitors, namely, Ong Tiang Choon & Co., his telephone numbers and the times in which he could be contacted and he gave also his full name and his identity card number and dated the document.

Now, P1 was drafted by the plaintiff who is a practising advocate and solicitor. If he intended that document to be a concluded and binding contract on him and the defendant, it is strange

that he did not draft it in clearer terms. It is also puzzling why he did not sign P1 as a contracting party. Signing by him of P1 is not absolutely essential in this case. Nonetheless the absence of his signature in P1 is particularly pertinent. No explanation was given by him as to why he did not find it necessary for him to sign P1. It seems to me that he must have entertained some uncertainty over the said premises. As a solicitor he must have realised at that time at any rate that there were other matters pertaining to the said premises still unknown to him and like a prudent purchaser he would not wish to be bound irrevocably there and then. It is not unnatural that he should by P1 show the intention of the parties to go ahead with the transaction and at the same time allow him an opportunity to reconsider should he subsequently discover anything adverse affecting the said premises. All these facts give rise to serious doubts as to whether plaintiff truly intended P1 to be binding on him irrevocably.

It is not in dispute that at the time when P1 was prepared, the parties had agreed on the price of the said premises. Invariably in a sale and purchase transaction price is the foremost consideration and is the first matter to be negotiated. But price alone is obviously not the end of the transaction and there are other areas which would have to be negotiated and agreed upon. This must have been in the minds of both the plaintiff and the defendant at the time. It is quite unrealistic to say as the plaintiff said that the sale and purchase agreement to be prepared and signed within one week later would contain the same terms and conditions as in P1 "with no addition or otherwise". This piece of evidence I am unable to accept. In my experience no solicitor ever prepares for a client a sale and purchase agreement with only the terms specified in P1; the least he would do would be to incorporate the Singapore Law Society's Conditions of Sale 1981.

The defendant appears to me to be an astute businessman. He required the sale and purchase agreement to be prepared by his solicitor and laid down his condition that the agreement must be signed within one week with the 10% deposit to be paid on signing. He took pains to write out the name and address of his solicitor on P1. He said:

"Once we agreed to the price I told prospective buyer to go to my lawyer's office, Ong Tiang Choon, to sign the agreement and to pay the 10% deposit and also I told the buyer that completion was to take place 8 weeks from the signing of the agreement. These 3 were my conditions."

In that frame of mind it seems to be highly unlikely that he intended P1 to be a concluded and binding contract. It is true that he accepted the sum of $500 from the plaintiff but he did not require it; it was given to him. Having received it, he made a point of stressing what he signed for: the insertion of the word "received" therein and his signing below shows that by signing he wished to acknowledge receipt of the sum of $500 only. Clearly but for the receipt of the sum he would not have signed P1. It seems to me that when the defendant insisted that the sale and purchase agreement to be signed within 1 week with the deposit to be paid, he contemplated the signing of that agreement as the binding agreement between him and the plaintiff.

For all these reasons I have come to the conclusion that the parties did not intend to be bound by P1 as a concluded contract but by the sale and purchase agreement to be prepared by the solicitors for the defendant and to be signed later. The plaintiff's claim therefore fails. I see no reason in this case why costs should not follow the event. I therefore dismiss his claim with costs.

Claim dismissed.

Solicitors: *Joethy & Co.; Chung & Co.*

RE APPLICATION OF LEO BOH BOEY

[O.C.J. (Wee Chong Jin C.J.) November 5, 1985]

[Singapore – Originating Motion No. 39 of 1985]

Administrative Law – Mandamus – Application for – Commissioner for Labour declining jurisdiction and failing to exercise power under Workmen's Compensation Act, 1975, s. 24.

Workmen's Compensation – Security guard killed at place of work – Unlawful killing – Claim – Workmen's Compensation Act, 1975, ss. 24, 25 & 30.

In this case the applicant's husband was employed as a security guard by a security agency and when so employed was killed at his place of work on October 29, 1983 in circumstances which point towards an unlawful killing. The employer gave notice of the occurrence of the said accident and death of the workman to the Commissioner for Labour. The Commissioner by letter required the employer to supply certain information. The employer supplied this information and asked the Commissioner to expedite the claim. About a year later the Commissioner referring to the Employer's Notice of the accident stated that from the